

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE-OPELOUSAS DIVISION**

**Curtis Smith**

**Civil Docket 06-567**

**versus**

**Judge Tucker L. Melançon**

**Warden Avoyelles Correctional  
Center, a/k/a Lynn Cooper**

**Magistrate Judge Methvin**

**ORDER**

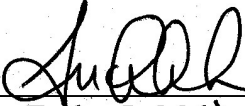
Before the Court is petitioner's Motion to Compel [Rec. Doc. 23], requesting that the Court compel United States Magistrate Judgment Mildred E. Methvin to submit a Report and Recommendation on petitioner's previously filed Motion to Proceed under Miscarriage of Justice Clause and Actual Innocence Clause [Rec. Doc. 12] of October 30, 2006.

The record reflects that on October 27, 2006, adopting Magistrate Judge Methvin's Report and Recommendation [Rec. Doc. 10], the Court entered judgment denying petitioner's petition for habeas relief with prejudice "as technically exhausted but procedurally defaulted" [Rec. Doc. 11]. No objections, which were due on October 25, 2006, had been received [Rec. Doc. 10]. Then, on October 30, 2006 the Court received petitioner's Motion to Proceed under Miscarriage of Justice Clause and Actual Innocence Clause [Rec. Doc. 12], which on November 1, 2006, the undersigned referred to Magistrate Judge Methvin to "conduct such hearings and take such other actions as she deems necessary and advisable, and to submit a Report and Recommendation" [Rec. Doc. 20]. The Court considered petitioner's Motion [Rec. Doc. 12] as an objection to the

R&R, and although untimely, the Court vacated its previous judgment, considered the objections raised therein, overruled them, and re-entered judgment denying habeas relief [Rec. Doc. 13]. Petitioner's Motion to Proceed under Miscarriage of Justice Clause and Actual Innocence Clause [Rec. Doc. 12] was found to "offer no evidence of actual innocence" as required under the law [Rec. Doc. 13]. Therefore, finding that petitioner's Motion to Proceed under Miscarriage of Justice Clause and Actual Innocence Clause [Rec. Doc. 12] has been duly considered and ruled on; and that there is no basis in law for in fact, as demonstrated by this record, that petitioner is entitled to the relief he seeks, it is

ORDERED that the Motion to Compel [Rec. Doc. 23] is DENIED.

THUS DONE AND SIGNED at Lafayette, Louisiana, this 3<sup>rd</sup> day of July, 2007.

  
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Tucker L. Melançon  
UNITED STATES DISTRICT JUDGE